



**CREATE Foundation Submission to the Royal Commission into
Institutional Responses to Child Sexual Abuse
Response to Issues Paper 7: Statutory Victims of Crime
Compensation Schemes**

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About CREATE Foundation

As the national consumer body advocating for children and young people with a care experience, CREATE seeks to provide opportunities for children and young people to have a voice and be heard. CREATE is unique in that it is one of only a handful of organisations in the world, and the only organisation of its kind in Australia, expressly established to advocate on behalf of children and young people in care.

CREATE's mission is to create a better life for children and young people in care, including those who are or have been the subjects of care and protection orders. CREATE is committed to connecting to children and young people with a care experience, empowering them to develop in order that they may realise their potential, and maximising the ways in which the care system can change for the better.

CREATE Foundation appreciates the opportunity to provide a response to the Royal Commission into Institutional Responses to Child Sexual Abuse seventh issues paper on statutory victims of crime compensation schemes. CREATE believes that children and young people with a care experience can play an important role in providing the Royal Commission an insight into their experiences within Australia's statutory care system.

CREATE Foundation's policy positions are informed by the voices of children and young people gathered through consultation and survey.

Executive Summary

Every year there are children and young people in out-of-home care in Australia who are sexually abused and they should be assisted to access victims of crime compensation schemes through existing case planning and transition planning processes. This requires that their case files are accurate and accessible to them.

Victims of crime schemes need to be accessible to people who have been sexually abused while in care, which means information is written in youth friendly language and is relevant to children and young people with a care experience.

The removal of age and time limits for making a claim to a statutory victims of crime scheme is essential so that children and young people who are in care today are able to access support when they need it.

The following information and recommendations relate to questions 2, 3, 4, 5 and 7 posed in the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) Issues Paper 7.

Recommendation 1:

Ensure reporting under the *National Framework for Protecting Australia's Children 2009-2020* requires states and Territories to collect and report

- the number, nature and resolution of complaints from children and young people in care; and
- the number of reports and substantiated reports of abuse of children and young people in care, and who the perpetrator is.

Recommendation 2:

Require state and territory child protection agencies to develop systems and processes to:

- Improve case planning procedures to report and assess crimes perpetrated against children and young people in care to address the support needs of children and young people in short, medium and longer term.
- Ensure accurate record keeping for children and young people in care in regard to crimes perpetrated against them.

Recommendation 3:

Require state and territory child protection agencies to develop systems and processes to support leaving care planning for young people that specifically addresses the support needed to assist eligible young people to apply for compensation or services provided by statutory victims of crime schemes.

Recommendation 4:

Require state and territory statutory victims of crime schemes to provide public information in 'youth friendly', plain English format specific to children and young people who have been victims of crime while in statutory care.

Recommendation 5:

Ensure state and territory statutory victims of crime schemes are accessible for children and young people who have been abused while in care through

- **removing time limits for making a claim;**
- **removing age cut offs for making claims; and**
- **recognising a wide range of evidence (for example, doctor's records, child protection investigations) when considering claims for compensation for victims of child sexual abuse.**

Introduction

In 2012, there were nearly 40,000 children and young people in out-of-home care in Australia and that number has been increasing for some years.¹ It is unclear how many children and young people have been sexually abused prior to entering the care system and how many children and young people are subsequently sexually abused while in care. State and territory reporting systems identify the abuse type from the first substantiation reported or the abuse most likely to place the child at risk. In 2012-13, sexual abuse was reported for 13% of all children where abuse was substantiated, which represents over 4,900 children.² There are no reliable national figures for the number of children and young people sexually abused while in care but we do know that it continues to occur.³

Many children and young people in the child protection system may be victims of crime through sexual abuse, physical abuse and family violence that brings them into the system. If they are abused while in the child protection system this may also be through criminal actions.

It is generally recognised that children and young people who are in care are vulnerable to further abuse depending on a number of factors including what they have already suffered and the safety and stability offered by their placement and carers.

While it appears eligible children and young people who are victims of crime can access statutory schemes across the jurisdictions, it is not clear how well child protection services are able to support children and young people with the process. For example, the NSW Ombudsman has a 'wait and see' approach as to whether there are any better outcomes as a result of proposed changes to improve the NSW Community Services' operating procedures for victim's compensation claims for children and young people in care.⁴

Systemic oversight and reporting

The *National Framework for Protection Australia's Children 2009-2020* (National Framework) provides a mechanism for standardising and improving child protection responses across Australia. As part of improvements to reporting child abuse under the National Framework, all Australian state and territory child protection agencies should record and report the number of children who report re-abuse in care, number of substantiated cases of re-abuse in care, perpetrators of the abuse and the steps agencies are taking to keep children and young people in care safe. This is important as responsible agencies need to understand the systemic nature of any abuse occurring in care and the number of children affected to be able to respond quickly.

In general, national reporting of the number, nature and resolution of complaints from children and young people in care about issues affecting them would assist in the oversight of child protection systems. Each of the states and territories has different mechanisms for reporting or investigating complaints and often any public reporting on the abuse of children and young people in care occurs

¹ Australian Institute of Health and Welfare (AIHW), *Child protection Australia 2011-12*, (Canberra: AIHW, 2013).

² *Ibid.*, p. 14.

³ Steering Committee for the Review of Government Services, *Report of Government Services 2013* (Canberra: Productivity Commission), p. 15.32.

⁴ NSW Ombudsman, *Review of the NSW Child Protection System: Are things improving? A Special Report of Parliament under s.31 of the Ombudsman Act 1974*, April 2014, (Sydney: NSW Ombudsman) p. 16.

when crises arise and the media become involved.⁵ National reporting under the National Framework may help to improve the response to systemic problems.

Recommendation 1:

Ensure reporting under the *National Framework for Protecting Australia's Children 2009-2020* requires states and Territories to collect and report

- **the number, nature and resolution of complaints from children and young people in care; and**
- **the number of reports and substantiated reports of abuse of children and young people in care, and who the perpetrator is.**

Accurate record keeping and access to records

The age of children and young people in care at the time of being sexually abused, can impact on their ability to seek any form of compensation for the abuse perpetrated against them. Depending when the abuse occurred, children and young people may not be aware of what happened to them. They could grow up living with the consequences (physical, emotional and psychological) of something they were too young to rationalise, understand, protect themselves from or remember.

Regardless of the state or territory responsible for the care and protection of a child or young person, their ability to claim for victims of crime compensation should be supported by the relevant state or territory child protection case planning practices. Crimes perpetrated against children and young people in care should be reported to police and case planning should address the immediate and longer term support needs of the child or young person.

State and territory child protection authorities or their delegate (for example, non-government organisation caseworkers) should document what kind of assistance may be needed in future for children and young people who have been sexually abused while in care. This should be done in consultation with statutory victims of crime agencies, therapeutic experts, carers, caseworkers and children and young people, and documented on children's and young peoples' files.

Ensuring accurate record keeping for children and young people in care is critical to their ability to pursue any compensation for the crime perpetrated against them. Children and young people who have been removed from their family and placed in the care of child protection statutory authorities need timely access to their personal information, to verify any claim they may seek through statutory victims of crime compensation schemes.

Recommendation 2:

Require state and territory child protection agencies to develop systems and processes to:

- **Improve case planning procedures to report and assess crimes perpetrated against children and young people in care to address the support needs of children and young people in short, medium and longer term.**
- **Ensure accurate record keeping for children and young people in care in regard to crimes perpetrated against them.**

⁵ Oakes, Dan, "Leaked documents show hundreds of sexual assault allegations in Victorian children's homes", 4 July 2014, ABC news online, <http://www.abc.net.au/news/2014-07-03/documents-show-hundreds-of-sexual-abuse-allegations-in-homes/5570166>.

Leaving care planning

CREATE has a long standing interest in improving outcomes for children and young people who have spent time in care through gradual and planned approaches to leaving care. In CREATE's most recent survey of children and young people in out-of-home care, 33% of 15-17 year olds (n=93) interviewed were aware of having an official 'leaving care plan'. Of those 93 young people, 48% reported being 'quite' or 'very' involved in the preparation of their plan.⁶

Leaving care planning should involve the young person and their caseworker developing a plan so when young people are no longer in statutory care, they have planned where they will live, how they will support themselves and who they can turn to for support. Improvements to leaving care planning in all states and territories could ensure that prior to young people leaving care they are aware of their history in care and are advised if they may have reason for a claim for victims of crime compensation. Leaving care plans should detail the type and level of support required by young people to help manage the impact of the sexual abuse they suffered while in care.

Young people under 25 years of age, who have been in care are likely to need additional support to access victims of crime compensation schemes as they often lack the support of family or trusting adults to assist them with bureaucratic and legal processes. Looking at victims of crime schemes in the leaving care plan can identify who will assist the young person to access schemes where appropriate.

Recommendation 3:

Require state and territory child protection agencies to develop systems and processes to support leaving care planning for young people that specifically addresses the support needed to assist eligible young people to apply for compensation or services provided by statutory victims of crime schemes.

Victims of crime scheme information

Information about victims of crime schemes should be readily available in 'youth friendly', plain English, have specific information for children and young people who have experienced sexual abuse while in care and tell people how they can be supported to pursue statutory victims of crime compensation.

Recommendation 4:

Require state and territory statutory victims of crime schemes to provide public information in 'youth friendly', plain English format specific to children and young people who have been victims of crime while in statutory care.

⁶ McDowall, J.J., *Experiencing out-of-home care in Australia: The views of children and young people (CREATE Report Card 2013)*, 2013. (Sydney: CREATE Foundation), p. 75.

Victims of crime schemes – time limits, age cut-offs and proof

Time limits for making claims to statutory victims of crime schemes and age cut offs (for example, within 3 years of turning 18 years old) unfairly disadvantage children and young people who have been in the care of institutions. It is not clear how well state and territory child protect agencies are able to respond to children and young people who are sexually abused while in care. Responses may vary across cases and across jurisdictions. In responding to the immediate abuse, it is not clear if agencies also plan for how children and young people will be told about their abuse, either at the time it occurs or at exit from care. Furthermore while information may be available to caseworkers regarding victims of crime claims, there is no systemic reporting of the extent that it is followed up with children and young people in case planning.

The existing statutory victims of crime schemes all have some flexibility to extend time limits for making claims but they all involve putting a case to a court, tribunal or other authority. It is preferable to remove the time limits to minimise any barriers to access for children and young people who are sexually abused while in the care of statutory child protection agencies. There should be particular consideration of their being children at the time of the abuse and the significant life disadvantages they face when compared with their peers.

The victims of crime compensation schemes in each of the states and territories have varied ‘burden of proof’ requirements as not all crimes committed against people have a successful conviction in the courts. In the case of child sexual abuse, CREATE believes that victims of crime compensation schemes need to recognise a wide range of evidence, including child protection investigations and doctor’s records so that victims can receive the support they need.

Recommendation 5:

Ensure state and territory statutory victims of crime schemes are accessible for children and young people who have been abused while in care through

- **removing time limits for making a claim;**
- **removing age cut offs for making claims; and**
- **recognising a wide range of evidence (for example, doctor’s records, child protection investigations) when considering claims for compensation for victims of child sexual abuse.**

Conclusion

CREATE thanks the Royal Commission for the opportunity to provide input to this important aspect of the Inquiry. Children and young people who have been sexually abused while in institutional care will require support to address their physical, psychological and emotional needs for many years. Our recommendations will help build and strengthen existing state and territory victims of crime compensation schemes and child protection systems to:

1. Collect and record accurate information
2. Improve case planning to inform children and young people in care of their history
3. Ensure young people transitioning from care are supported to navigate the system while making a claim for compensation
4. Ensure victims of crimes compensation schemes are written in appropriate language for young people and
5. Ensure access to making a claim is not time limited, does not contain age cut offs, and recognises a wide range of evidence that a crime has been committed.

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